

Marketplace Facilitator Work Group

September 25, 2018

Alternatives for discussion of definitions based on survey results

Marketplace

A physical or electronic place [including but not limited to, a store, booth, Internet website, catalog, television or radio broadcast, or a dedicated sales software application—see [CT, KY, OK, PA statutes](#)] where [a marketplace seller sells or offers for sale—see [SD statute](#)] tangible personal property [taxable services, digital goods] is/are offered for sale [for delivery in this state—see [SD statute](#)][regardless of whether the tangible personal property, digital property, marketplace seller, or marketplace has a physical presence in the state—see [KY, SD statutes, LA supports](#)].

Marketplace seller

A person [not a related party to a marketplace facilitator—see [AL statute](#)] who has an agreement with a marketplace facilitator [regarding sales of such person—see [CT statute](#)] and makes retail sales of tangible personal property [taxable services, digital goods] through a marketplace owned, operated, or controlled by a marketplace facilitator [whether or not such person is required to register . . . —see [CT, WA statutes](#)] [even if such person would not have been required to collect and remit sales and use tax had the sale not been made through such marketplace—see [IA statute](#)]

MN: Add requirement that marketplace provider have a place of business in the state.

PA: No need for the requirement that the marketplace provider/facilitator have a place of business in the state.

Marketplace facilitator[provider]

Narrow definition: [GA \(need to include exclusion for “payment processing services” when that is all the business does\), KY, MN, OK, PA support](#)

Any person who facilitates a retail sale by a marketplace seller by:

(1) listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property [, services, or digital goods that are subject to tax under this chapter] [rendering services in connection with such sales or otherwise enhancing or enabling such sales for compensation, other than merely providing payment processing services]; and

(2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the marketplace seller [for compensation—[see CT statute](#)] [regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services—[see MN, SD statutes](#)].

Broad definition: [AL, IA, LA, MI, ID, WA support](#)

See Washington “marketplace facilitator” statutory definition:

"Marketplace facilitator" means a person that contracts with 2 sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person, and engages:

(a) Directly or indirectly, through one or more affiliated persons in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(iv) Software development or research and development activities related to any of the activities described in (b) of this subsection [], if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller's products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

- (v) Branding sales as those of the marketplace facilitator;
- (vi) Order taking;
- (vii) Advertising or promotion; or
- (viii) Providing customer service or accepting or assisting with returns or exchanges.